



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R01-OAR-2018-0790; FRL-9990-94-Region 1]

#### Air Plan Approval; Massachusetts; High Occupancy Vehicle Lanes

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision provides for the Massachusetts Department of Transportation (MassDOT) to construct and operate specified transit facilities and high occupancy vehicle (HOV) lanes established therein. Implementation and continued monitoring of these projects will help reduce the use of automobiles and improve traffic operations on the region's roadways, resulting in improved air quality. This action will have a beneficial effect on air quality because it is intended to reduce vehicle miles traveled (VMT) and traffic congestion in the Boston Metropolitan Area. Massachusetts has adopted these revisions to reduce emissions of volatile organic compounds (VOC), particulate matter (PM), and nitrogen oxides (NO<sub>x</sub>). This action is being taken under the Clean Air Act.

**DATES:** This rule is effective on **[Insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2018-0790. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square - Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Eric Rackauskas, Air Quality Unit, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square - Suite 100, (Mail code OEP05-2), Boston, MA 02109 - 3912, tel. (617) 918-1628, email [rackauskas.eric@epa.gov](mailto:rackauskas.eric@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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## **I. Background and Purpose**

On December 17, 2018 (83 FR 64495), EPA published a notice of proposed rulemaking (NPRM) for the Commonwealth of Massachusetts. The NPRM proposed approval of amendments to Massachusetts' 310 CMR 7.37: High Occupancy Vehicle Lanes. The amended 310 CMR 7.37 contains added definitions, revised due dates for certain requirements, minor

technical amendments, and clarifying language. The regulation is designed to reduce the use of automobiles in the Metropolitan Boston Area, and to improve traffic operations on the region's roadways. Reducing the number of vehicles on the road and easing traffic conditions on major highways will result in a reduction of vehicle miles traveled (VMT) which eases traffic congestion and will lead to improved air quality by lowering mobile source emissions.

A detailed discussion of Massachusetts' SIP revision and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here. EPA received several comments supportive of HOV lanes and encouraging Massachusetts to add even more HOV lanes outside of the Greater Boston Area. One commenter questioned whether the regulation contained requirements for only HOV studies rather than the construction and implementation of HOV lanes. The rulemaking does contain language requiring the implementation of several HOV lanes, which have been constructed and are currently in use by MassDOT. EPA received no adverse comments.

## **II. Final Action**

EPA is approving, and incorporating into the Massachusetts SIP, the revised regulation 310 CMR 7.37, High Occupancy Vehicle Lanes. This regulation was submitted to EPA on July 9, 1996. This updated regulation includes technical amendments and date clarifications to the previous SIP-approved version of 310 CMR 7.37, which was originally approved on October 4, 1994 (59 FR 50495). EPA is approving 310 CMR 7.37 into the Massachusetts SIP because EPA has found that the requirements are consistent with the CAA.

## **III. Incorporation by Reference**

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Massachusetts regulations described in the amendments to 40 CFR part 52 set

forth below. The EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>1</sup>

#### **IV. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

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<sup>1</sup> 62 FR 27968 (May 22, 1997).

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take

effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 11, 2019.

Deborah Szaro,  
Acting Regional Administrator,  
EPA Region 1.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## **PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### **Subpart W—Massachusetts**

2. In § 52.1120(c), amend the table by revising the entry “310 CMR 7.37” to read as follows:

#### **§ 52.1120 Identification of plan.**

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(c) \* \* \*

#### **EPA APPROVED MASSACHUSETTS REGULATIONS**

<b>State citation</b>	<b>Title/subject</b>	<b>State effective date</b>	<b>EPA approval date <sup>1</sup></b>	<b>Explanations</b>
**	*	*	*	**
310 CMR 7.37	High Occupancy Vehicle Lanes	4/5/1996	<b>[Insert date of publication in the <u>Federal Register</u>],</b>  <b>[Insert <u>Federal Register</u> citation]</b>	Technical revisions to SIP approved regulation
**	*	*	*	**

<sup>1</sup> To determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

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[FR Doc. 2019-04874 Filed: 3/19/2019 8:45 am; Publication Date: 3/20/2019]